

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA

v.

JOSE ADAN MARTINEZ CASTRO,

Defendant.

**Criminal No.
15-10338-56-FDS**

**ORDER CONCERNING POSSIBLE WAIVER
OF ATTORNEY-CLIENT PRIVILEGE**

SAYLOR, J.

Petitioner Jose Adan Martinez Castro, proceeding *pro se*, has filed a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. The petition alleges various forms of ineffective assistance of counsel by petitioner’s counsel, Attorney James M. Caramanica, including failure to prosecute an appeal.

“It has long been the rule in the federal courts that, where a habeas petitioner raises a claim of ineffective assistance of counsel, he waives the attorney-client privilege as to all communications with his allegedly ineffective lawyer.” *Bittaker v. Woodford*, 331 F.3d 715, 716 (9th Cir. 2003).

Further, in this District, courts reviewing habeas petitions “may direct the parties to expand the record by submitting additional materials relating to the motion” and “[a]ffidavits also may be submitted and considered as part of the record.” Rule 7, D. Mass. Rules Governing Section 2255 Cases.

Accordingly, upon review of Martinez Castro’s § 2255 petition and the materials submitted by the parties to date, the Court orders as follows:

1. Petitioner Martinez Castro is hereby deemed to have waived the attorney-client privilege as to all communications with Attorney Caramanica concerning the issues raised in the § 2255 petition;
2. Within 21 days of this Order (that is, by October 1, 2019), Attorney Caramanica is hereby ordered to produce and/or disclose to the government all materials and communications concerning the subject matter of the § 2255 petition; and
3. Within 21 days of this Order (that is, by October 1, 2019), Attorney Caramanica is hereby ordered to file with the Court an affidavit responding to the § 2255 petition (including setting forth any relevant details regarding communications, correspondence, and/or documents regarding the issues raised in the §2255 petition).

So Ordered.

Dated: September 10, 2019

/s/ F. Dennis Saylor IV
F. Dennis Saylor, IV
United States District Judge